HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 500 of 2005 (SS)

Ram Dayal Kapoor ..... Petitioner

Versus

1. State of Uttaranchal
2. Chief Development Officer, R.D.O. Udham Singh Nagar
3. District Development Officer, Udham Singh Nagar ..... Respondents

Sri Pramod Belwal, Advocate for the petitioner
Sri Paresh Tripathi, Standing Counsel for the respondents.

Dated: 4th May 2005

Hon'ble Rajesh Tandon, J.

Heard the learned counsel for the parties at length.

By the present writ petition the petitioner has prayed for a writ of certiorari quashing the order dated 20.4.2005 passed by the respondent No. 3, annexure-1 to the writ petition.

Briefly stated the facts giving rise to the present writ petition are that petitioner is employed as Accountant in the establishment of the respondents. The petitioner has submitted that he is due to retire on 31.10.2005 but the respondent No. 3 passed his transfer order only to harass him.

The petitioner made a representation on 23.4.2005 before the respondents but the same has not been decided as yet.

So far as the transfer order is concerned no interference can be made under Article 226 of the Constitution of India.

It has been held by the Apex Court in the *case Shilpi Bose and others vs. State of Bihar and others AIR 1991 SC 532* as under:

"In our opinion, the courts should not interfere with a transfer order which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A Government Servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from the one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the Department. If the courts continue to interfere with day to day transfer orders issued by the Government and its subordinate authorities, there will be complete chaos in the Administration, which would not be conducive to public interest. The High

Court over looked these aspects in interfering with the transfer orders."

It is well settled that the transfer is an exigency of service. However option for the petitioner to approach the higher authorities is available and the petitioner is at liberty to approach the higher authority.

The Apex Court in the case State Bank of India vs. Anjan Sanyal and others (2001) 5 SCC 508. it has held as under.

"*An order of transfer of an employee is a part of the service conditions as such order of transfer is not required to be interfered with lightly by a court of law in exercise of its discretionary jurisdiction unless the court finds that either the order is mala fide or that the service rules prohibit such transfer or that the authorities, who issued the order, had not the competence to pass the order.*"

As stated above the petitioner has already made a representation to the respondents against his transfer order. the respondents are, therefore, directed to consider the representation of the petitioner and to pass appropriate orders in the light of the observations made above, within a month

after receipt of certified copy of this order. the transfer order shall remain in abeyance for a period of six weeks only.

With the aforesaid observations the writ petition is disposed of. No order as to costs.

Rajesh Tandon, J.

4.5.2005
*Dhyani